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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 16th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 August 1991, at 10 a.m.

Chairman: Mr. JOINET

later: Mr. HELLER

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The meeting was called to order at 10.25 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION ESTABLISHED UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued) (E/CN.4/Sub.2/1991/14, 15, 46 and 51; E/CN.4/Sub.2/1991/NGO/9 and 12; E/CN.4/Sub.2/1990/2; E/CN.4/Sub.2/1989/47, 51 and 55)

1. Mr. TREAT, resuming the statement that he had not had time to complete at the previous meeting, said that the flagrant and consistent violations of human rights in certain countries had been well described. He had nothing more to say about the situation in Iraq, but he wished to draw attention to conditions in Iran where, according to Amnesty International, over 5,000 persons had been executed in the past few years. Moreover, the European Parliament had called for a very strong condemnation of the large-scale violations of human rights in that country.

2. The allegations of human rights violations in East Timor should also be investigated. A fact-finding-team should visit Indonesia to determine exactly what had taken place. Fortunately, there were some encouraging signs of progress. According to a United Nations press release dated 27 June 1991, there had been talks between Indonesia and Portugal and the two were due to meet again. On 12 August 1991 it had been agreed that a delegation from the Portuguese Parliament would visit East Timor in October. The Special Rapporteur on Torture was also due to visit Indonesia in November. In addition, it would be helpful if a credible non-governmental organization could visit East Timor and report to the Sub-Commission on its findings. The Commission on Human Rights had decided not to take up the case of East Timor because it had considered that some progress was now being made. In general, the Sub-Commission should adopt a solution-oriented approach rather than just condemn Governments.

3. The CHAIRMAN said that the Sub-Commission had concluded its consideration of item 6.

PROTECTION OF MINORITIES (agenda item 18) (E/CN.4/Sub.2/1991/43; E/CN.4/1991/53 and Corr.1; E/CN.4/Sub.2/1990/46)

4. Mr. KEILAU (Centre for Human Rights), introducing the item, recalled that the Sub-Commission had considered the protection of minorities for a number of years. At its forty-first session it had decided, in resolution 1989/44, to consider the subject as a separate item on its agenda as from its forty-second session. In 1990, the Sub-Commission had considered Mr. Eide's report on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1990/46). In resolution 1990/5 the Sub-Commission had requested the Special Rapporteur to submit a preliminary report to the Sub-Commission at its forty-third session. That report was contained in document E/CN.4/Sub.2/1991/43. Under the present item the Sub-Commission might also wish to take account of the report of the

working group to consider the drafting of a declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities (E/CN.4/1991/53) set up by the Commission on Human Rights.

5. Mr. Heller took the Chair.

6. Mr. EIDE (Special Rapporteur), introducing his preliminary report (E/CN.4/Sub.2/1991/43), said that in the light of contemporary developments there was no need to emphasize the importance of the subject under consideration. How to tackle it, however, required more reflection. At its forty-second session the Sub-Commission had recognized the need to find better answers to human rights problems than simply condemning Governments. It was particularly appropriate to find peaceful and constructive ways of handling situations involving minorities. There was a need to seek, or to establish, mechanisms for the settlement of conflicts through mediation, good offices or other appropriate means, at both the national and the international levels. Dialogue was an essential element. If only Governments could recognize that different ethnic groups existed in their State and were willing to foster a meaningful dialogue among those groups themselves and between them and the Government, much violence could be avoided and much social development achieved.

7. Turning to his preliminary report, three questions quickly came to mind. What were "minorities"? Why and how did they constitute problems? How should those problems be solved? None of those questions could be easily answered. The Sub-Commission had to recognize the complexity of the issues involved but not to be daunted by them. His introduction focused on definition, the variations in minority problems in time and space, the progress of the study and the quest for information, and the content to be given to the guidelines.

8. He still took the view that the Sub-Commission should not start with a definition in its strict sense. In the questionnaire it was stated that the study did not make use of a precise definition of "minorities" but used the term in a very broad sense, meaning nationalities and ethnic, linguistic or cultural groups which in significant respects were different from other groups in a sovereign State. Some persons had criticised that approach, arguing that a more rigorous working definition of the term might be necessary; otherwise Governments would decide arbitrarily whether or not there were minorities in their territory. That objection might well be true, but it was very useful to know the opinions of Governments as to what minorities, in their view, existed within their countries. Those opinions would then be compared with other information from non-governmental organizations and other sources. Where there was a discrepancy between the answers, the definition which he had used was open enough to include both settled minorities and recent immigrant groups such as migrant workers. Originally he had not intended to include religious minorities, but with some hesitation he had changed his mind, recognizing, however, that the inclusion of religious minorities might lead to overlapping with other activities within the United Nations system.

9. Caution was required when considering the problems connected with minorities, which had changed very much over time and varied greatly in space. The differences were so great that it was difficult to engage in a

meaningful dialogue unless it was recognized that an individual's personal experience did not provide much guidance in understanding problems in other parts of the world.

10. Information on government replies, sources of information and further work was sought in two ways: on the basis of the questionnaire sent to Governments, specialized agencies and non-governmental organizations, and of a review of State reports under the treaty system and committee debates on them. The questionnaire was annexed to the report. By 15 June 1991, replies had been received from 12 Governments, from one specialized agency and from five non-governmental organizations. Since then, answers had been received from several countries but had arrived too late to be included. They would be taken into account in the final study. The additional replies had come from Bolivia, Burundi, Colombia and Yugoslavia. He was particularly pleased with the comprehensive reply from Yugoslavia, which had taken a pioneering interest in minority issues. Several Governments had informed him that replies were being prepared and it was expected that a large number of additional replies would be received in the course of the next year. Partly for that reason, the present report did not examine in depth the replies received so far.

11. The second major source of information would be a review of the reports submitted by States to United Nations committees established under the relevant conventions. Efforts to collect those reports had not been completed, nor had it been possible to start the analysis of the very substantial material contained in them. Some 1,400 reports and summary records might have to be reviewed. The work involved in analysing them required time-consuming efforts which had not yet been made. It was very much hoped that the Centre for Human Rights would make available sufficient personnel to carry out that work.

12. Information from non-governmental organizations was also essential. The main task was not to consider claims of violations but to look for approaches facilitating their peaceful and constructive solution. That rarely came through in the responses obtained so far.

13. The starting point for guideline 1 on non-discrimination and full participation was article 1 of the Universal Declaration of Human Rights, which stated that all human beings were born free and equal in dignity and rights. Equality in the enjoyment of human rights required abstention from, and prevention of, discrimination; equality in dignity required respect for the self-identification of the individual with his or her group. Observance of the principle of non-discrimination, if properly applied to situations involving minorities, could go a long way towards preventing conflicts. Very often the intensity of religious, national or ethnic conflicts could be traced back to the lack of respect for ordinary individual human rights on an impartial basis. Over the years, the special rapporteurs appointed by the Sub-Commission had produced many important studies on that subject. In particular, full impartiality in the administration of justice was essential, especially in the activities of law enforcement officials and the security forces. The basis of any effort to solve minority problems should therefore be a properly constituted system for the preservation of the rule of law on which everyone could rely and a fully-fledged democracy allowing for the manifestation of different views, opinions and values in a pluralist society.

14. As far as guideline 2 on the rights of minorities and the stability of States was concerned, a primary concern of all Governments was to maintain the political independence and territorial integrity of their own State, and outside States were required to respect that sovereignty and integrity. Contemporary international law as reflected in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations made that point clear, but with some modifications, the most important being the right of peoples to self-determination. In some parts of the world, federal States were now under pressure to grant greater autonomy, or even independence, to some of their components.

15. Guideline 3 on the dangers of ethnic conflict for security was important because national and even personal security was impaired by ethnic and religious conflicts, which often led to serious dislocations, to the internal displacement of populations, and to international flows of refugees. Those phenomena were not only destablilizing but created severe obstacles to the realization of human rights for all. They might begin with nothing more than some feeling of unease about alleged discrimination. The allegations were gradually combined with protests and political demonstrations. Rumours emerged and were easily believed. If at that stage the security forces over-reacted, the situation could then be exploited by self-appointed militants among the minority group responding in kind to the action taken by the security forces. That in turn could lead to new and more violent responses by the latter. Violence was sometimes deliberately provoked by militants on both sides for the purpose of stirring up public opinion and creating firm confrontational alignments leading eventually to massacres and reprisals. The situation could eventually degenerate into a guerrilla/counter-guerrilla process, bringing about full polarization in which extrajudical executions became part of the process.

16. It was important to stop that evil spiral in its early stages. That could not be done simply by police and military measures but required communication and dialogue between the parties. However, the problem for both sides was to find acceptable compromises. That depended also on what they expected in terms of external support. Exaggerated expectations could make minorities intransigent in their demands.

17. In such circumstances it was essential that the principles of humanitarian law be taken into account, although it had to be recognized that international humanitarian law was very poorly developed in regard to internal conflicts. Recent studies of the issue had demonstrated the need for parties to take much stronger precautionary measures in order to avoid an irrational escalation of a conflict, and the risk of its spilling over to international conflicts were substantial. The dangers of intervention and counter-intervention arose. Regional peace was threatened by such conflicts when the fate of a given minority was of paramount concern to another State. The risk of interference by that other State led to insecurity and could also be exploited by militants among the minority concerned, since the other State might find it difficult to resist the pressure of domestic public opinion which demanded action when serious violations of the rights of a related

minority was claimed to take place in a neighbouring State. Sometimes such intervention was held to be justified as humanitarian. However, it should be generally agreed that the best course would be to avoid such situations and that, in order to do so, efforts be made by both sides in the internal conflict to settle it by peaceful means. Thus, it was appropriate to stress that the solution to the minority problem must be based on three indispensable conditions - the political will of the State having minorities, the will of the various communities to live together in peace and harmony, and the cooperation and positive assistance of the State which felt itself concerned by a minority problem even though it was not the State in which the minority lived.

18. The best way to prevent external intervention was to find constructive domestic solutions based on consistent confidence-building efforts. It was also desirable to develop international mechanisms making it possible for the parties to apply to the international community for assistance in the settlement of their conflict. The question of the settlement of conflicts would therefore be given great importance in the final version of the report.

19. For guideline 4 on negative and positive measures, three issues were important. First, members of minorities should enjoy all the same human rights in the same way as all other persons, without discrimination. For that to happen, non-discrimination measures were essential. Second, minorities should be allowed to preserve their dignity as members of a particular community based on religion, language or culture. That might or might not require special measures. Third, in some cases minorities might need protection for the material basis of their culture and lifestyles. For that, special measures would undoubtedly be required.

20. Guideline 5 concerned the role of the development process in removing economic and social obstacles to cooperation and mutual respect among all groups in society. Development and so-called modernization had tended to increase rather than decrease national and ethnic identification and inter-ethnic cleavages. Two of the main causal factors were: the creation of prosperity for some and deprivation for others, and the different values attached by groups to different kinds of development.

21. Guideline 6 focused on the necessity of ensuring that measures adopted to protect minorities also respected the human rights of majorities. In their pursuit of equality and non-discrimination, members of minorities were not entitled to use means and methods constituting violations of human rights of members of majorities or of the rights of those members of the minority concerned who disagreed with their leaders. The integrity and dignity of members of majorities had to be respected by minorities; they were not entitled to humiliate or terrorize members of the majority who might be in a minority in a particular region.

22. In conclusion, he asked members of the Sub-Commission to comment on the answers he had received and on his review of other material in order to make the study as much as possible a collective study.

23. Mrs. DAES, commenting on the importance and usefulness of the study by Mr. Eide (E/CN.4/Sub.2/1991/43) recalled that there had not been any

generalized arrangements for the protection of minorities in the United Nations as there had been in the League of Nations. Article 1 of the Charter of the United Nations proclaimed as one of the purposes of the United Nations "To achieve international cooperation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion", while the purport of later Articles, particularly Articles 55 and 56 was also to secure equality of rights without discrimination. Although that aim represented a considerable step forward for minorities, in comparison with the discrimination from which they had suffered throughout history, it was still not enough: as the Permanent Court of International Justice had stated in its advisory opinion of 6 April 1935 on the case of the Greek minority schools in Albania, although the first step necessary to protect minorities was to place them in every respect on a footing of perfect equality with the other nationals of the State in which they lived, the second necessary step was to ensure for them suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics. Positive discrimination therefore, including the adoption of legislative, administrative and other measures, was required to permit persons belonging to minorities to retain their ethnic, religious and cultural identity and to preserve their dignity as members of a particular community based on religion, language or culture.

24. In that respect the provisions of paragraph 4 of article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination were applicable, providing, inter alia, that such measures should not, as a consequence, lead to the maintenance of separate rights for different racial groups and should not be continued after the objectives for which they were taken had been achieved. The Special Rapporteur in his report and within the framework of guidelines 1 and 4 had examined both the principles of equality and of non-discrimination as well as the basic limitations to be observed in human rights cases, which should apply to the majority as well as to minorities. The Special Rapporteur might consider adding to paragraph 33 of his report the general legitimate limitation of prohibition of the abuse of any right, as well as the prohibition of the abuse of limitations or restrictions by Governments: in other words, the prohibition of the abuse of power. In that connection it should be stated that the Human Rights Committee had the ex officio power and obligation to examine whether limitations or restrictions provided for by national law, the Universal Declaration or the International Covenants on Human Rights, had been used for improper purposes, even if not expressly invoked by the individuals whose rights or freedoms were limited or restricted.

25. The purpose of Mr. Eide's report was, as stated in paragraph 20, to explore peaceful and constructive solutions to situations involving minorities. Even at the time of the League of Nations, member States had felt the need to adopt or provide peaceful arrangements or procedures to solve problems involving minorities. One example was the well-known German-Polish Convention of 15 May 1922, which had been designed to protect the minorities on both sides of the frontier in Upper Silesia. It had set up Minorities Offices, a Mixed Commission and an Arbitral Tribunal; if those procedures proved insufficient, the matter could be referred, as had happened in the case

of the rights of minorities in Upper Silesia in 1928, to the Permanent Court of International Justice. In general those arrangements had worked well; at least they had prevented a major international dispute about minorities during the period from 1919 to 1939.

26. With regard to the definition of the term "minority", she fully supported the Special Rapporteur's view that the study should not begin with a definition. Nevertheless, in elaborating and proposing possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, the Special Rapporteur might wish to take into account the terms of the Sub-Commission's draft resolution on the work of its second and third sessions submitted to the Commission on Human Rights in 1950: "(a) The term 'minority' includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population; (b) Such minorities should properly include a number of persons sufficient by themselves to develop such characteristics; and (c) The members of such minorities must be loyal to the State of which they are nationals" (E/CN.4/Sub.2/117, p. 16). With regard to the loyalty of members of minorities, she stressed that, in her opinion activities by peaceful and democratic means to achieve internal self-determination could not be considered as disloyalty to the State in which minorities lived.

27. Turning to guideline 3, she agreed with the views expressed by the Special Rapporteur in paragraphs 43 to 53. Unfortunately there were many situations in the contemporary world that threatened national security and even regional peace. She stressed that regional peace was often endangered by conflicts when the treatment and fate of a given minority was of particular concern to a neighbouring State.

28. She emphatically endorsed the decision of the Special Rapporteur to include religious minorities and to consider them within the scope of the study. It was regrettable that from the time of ancient Rome the emancipation and repression of individuals and groups in areas of freedom of conscience and religious practice had given rise to humanitarian concern and in certain cases had provoked serious conflicts. There had also been problems caused by the co-existance of religion and linguistic or ethnic groups. Although it should be recognized that religion no longer played a preponderant role in contemporary societies as a mobilizing force for autonomous action, the protection of religious minorities should also be included in any national or international instruments related to minorities.

29. With regard to guideline 6 on the necessity of ensuring that measures adopted to protect minorities also respected the human rights of majorities, she pointed out that all procedures and the measures in the legislative or administrative field adopted within the framework of the protection of minorities and the respect of the rights and fundamental freedoms of others should always be based on national, democratic and liberal constitutions and on contemporary international human rights law.

30. In conclusion, she proposed that: the Special Rapporteur should be instructed to continue and complete his important, extremely difficult and

complex study: a reminder should be sent on behalf of the Secretary-General to Governments concerning the submission of their replies to the Special Rapporteur's questionnaire; the Secretary-General should be requested to give the Special Rapporteur all the assistance he might require to enable him to carry out his work successfully; the expert meeting on minorities provided for by Sub-Commission resolution 1990/5 should take place in 1992; and the Special Rapporteur should be authorized to visit at least two countries in which minorities existed in order to get first-hand relevant information that would greatly contribute to the further elaboration of his study.

31. Mr. SACHAR, congratulating Mr. Eide on his preliminary report (E/CN.4/Sub.2/1991/43), regretted that his own country had not responded to the questionnaire that had been sent to it, especially since the Indian Constitution provided a number of safeguards for minorities which would have helped the Special Rapporteur in his work.

32. Although Mr. Eide had said that he would not start with a definition, he had indicated in paragraph 12 of his report that he was using the word minorities to mean "nationalities, ethnic, linguistic or cultural groups which in significant respects are different from other groups in a sovereign State". By that definition a large part of the world, including India, would be excluded. The largest minority in India, the Muslim minority of about 10 to 12 per cent, had been part of India for hundreds of years, had not come from outside the country and was not ethnically different from the rest of India. He himself was closer to a Muslim in Lucknow in the north than he was in language, general culture and thought to a Hindu like himself in the south. Similar conditions might hold for Greece or parts of China. The definition, to be helpful, should have the ethnic qualification removed, since countries might say that since a minority was not ethnically different it did not qualify for protection.

33. The same consideration applied to paragraph 17 of the report which stated that ethnic identity could not be easily separated from religious identity. It would be better not to consider that question, so as not to exclude many groups from protection.

34. As Mrs. Daes had mentioned, paragraph 33 of the report referred to the obvious limitation that "minorities cannot demand special privileges and thus obtain a better status than the others in society"; however, in his view, minorities were entitled to such protection, and article 13 of the Indian Constitution in fact provided that all minorities, whether based on religion or language, should have the right to establish and administer educational institutions of their choice. In India some of the oldest and still most prestigious institutions were Christian schools set up by the various churches. Those schools had management boards composed exclusively of Christians of their own churches; they had their own teachers and authorities, and their own pay scales. Since schools were 80-85 per cent State-funded, the State demanded its share in the management of schools and colleges, and it had wanted to do so in minority institutions. The matter had gone two or three times to the Supreme Court, which had always ruled that it was not permissible for the State, under the constitutional protection of minorities, to insist on having its representatives on the management board: the Court had taken the

view that management had to be left to the minorities. Some States had tried to circumvent that judgement by saying that if schools were affiliated to universities for examination purposes there had to be representatives of the university or the Government on the management board. The Supreme Court had not accepted that argument either; it had interpreted article 13 to mean total minority protection for running the educational institutions given to the minorities. That was not true of the majority-run schools, which had to have representatives of the State Government on management boards and comply with the pay scale laid down by the State Government. Disciplinary action against school employees was subject to appeals to a State authority, unlike the practice in minority educational institutions. He agreed with that positive, affirmative extra advantage given to the minority educational institutions, although some Muslims felt that despotic powers were given to management boards not subject to any checks by the courts, which were also bound by article 13.

35. Paragraph 41 of the report had made a somewhat explosive statement, implying that if minorities were not well looked after there might be a danger of interference by neighbouring States which felt themselves to be ethnically similar to those minorities. Mr. Eide had rightly said that "a delicate balance, therefore, must be struck between the two neighbours. Adherence to the principle of respect for the integrity and stability of States is particularly important in such circumstances". However, in paragraphs 47 and 51 a broad indication was given that if the situation went badly in some countries with regard to minorities some neighbouring countries with a majority of that ethnic population might be persuaded or forced to intervene. That was a very dangerous suggestion. Any violation of minority rights should be condemned, and it would be a duty of international bodies to see that the State concerned was publicly humiliated and even subjected to a trade embargo or diplomatic ostracism. But to suggest that any neighbour would have the right to interfere in matters relating to the sovereignty of another State on the apparent grounds of humanitarian intervention was very dangerous, because that principle was now being extended. Was it civilized to leave such matters to be judged by subjective standards of a Power that was militarily strong? His own country was a large one surrounded by smaller countries, and he did not want any large country to have the right to intervene in a neighbouring area on behalf of its own people or a people religiously connected with it. That doctrine was dangerous, because the moment it was applied an attempt was being made to divide the State along religious lines. His country called itself a secular socialist republic, which meant that religion had no place in the State. Articles 25 and 26 of the Indian Constitution forbade any help by the State to any religious denomination. He had noticed in paragraph 97 of the report that in Greece the mufti was given judicial powers because he represented a religious minority. That was not so in India: barring the personal laws of Muslims on matters of inheritance, marriage and divorce, Indians were subject to common law, since every Indian was considered as an Indian, irrespective of religion. He suggested, therefore, that Mr. Eide should reconsider that aspect of his report.

36. The special measures referred to in paragraph 57 were not applicable to minorities in general but only in cases where special protection had had to be given to, for example, the blacks in the United States and even some tribal

populations in India. In no circumstances, however, could it be argued that once the objectives sought had been achieved, the rights of minorities to maintain their own culture, educational standards or institutions need not be protected by positive constitutional action.

37. Referring to guideline 5, he considered that the adverse effects of development on minorities might well be a European or American phenomenon. In the developing countries development displaced everyone. Development should not result in unsettling people without arrangements being made for their resettlement. The problems of development would however be better discussed under item 7 or item 8.

38. He supported the conclusion reached by the Special Rapporteur in paragraph 52 that the best way to prevent external intervention was to find constructive domestic solutions based on consistent confidence-building efforts and that accordingly, in the final report, special importance should be attached to the question of domestic and international institutions and procedures for conflict resolution. In that connection, accession by more States to the Optional Protocols would strengthen the movement towards conflict resolution and States which had not yet adhered to them should be encouraged to do so.

39. Mr. EIDE, speaking on a point of clarification, said that the issue of humanitarian intervention should not be taken out of context. The best way to relieve friction was to pursue confidence-building efforts. In his final report he would therefore concentrate on the issue of confidence-building. He did not endorse the principle of humanitarian intervention.

40. Mr. GUISSE said that the existence of minorities raised a number of legal, social, political, economic and cultural problems which were becoming increasingly difficult to resolve.

41. The first question was that of developing a definition of the term minority. It was already generally accepted that the term covered human groups which considered themselves or which were considered to be different from the majority. That was somewhat vague. A common feature of such groups was that they were distinguished by language, religion, ethnicity, culture or race. The concept of national minority was the cause of serious difficulties in a number of countries and needed further study. Minorities increasingly stressed, sometimes to the point of armed conflict, their ethnic, religious, linguistic or racial identity and its protection. Particular attention needed to be paid to ethnic minorities, of which there were many in Africa. In Senegal alone there were 27 different ethnic minorities; in Nigeria and Cameroon there were hundreds.

42. The international community was aware of the claims of minorities and had pursued the issue with those States on whose territories minorities lived. Those groups should clearly be able to enjoy the prerogatives to which they were entitled. A minority was not an element outside society but was an integral part of society. It was subject to the sovereignty of society and should participate in nation-building for the whole people. The minority should never take any action which could threaten national or international

security and should not in any circumstances disturb public order. The minority should not be marginalized and should not be subject to any form of discrimination.

43. The State in which the minority lived must ensure that it enjoyed the same degree of economic and social progress as the other components of society. In case of disaster or conflict, the minority should enjoy the same protection as that accorded to other human groups. On the issue of language, the State should not only permit minorities to use their own language but should in addition provide the logistical means for its teaching and use. The same was true of religion.

44. The problem was therefore complex. Minorities were becoming more and more numerous. In the near future their claims would represent a main concern of the international community and of individual States. The Sub-Commission must move towards a set of rules but also find an exact definition of minorities.

45. There was the additional question of majorities which might become minorities, as for example in South Africa and the occupied Palestinian territories.

46. Mr. van BOVEN expressed his appreciation of the preliminary report submitted by Mr. Eide (E/CN.4/Sub.2/1991/43) with dealt, in both legal and broad policy terms, with the issue of problems involving minorities. The document would be an invaluable part of the learning process for members of the Sub-Commission as well as for Governments, minorities and non-governmental organizations.

47. The presence of so many government observers at the session indicated that Governments also were interested in the learning process as it applied to the issue of minorities. It was very important that the Sub-Commission should receive information from Governments so that it could learn from their experience and involve them in the process. He was however concerned at the increasing number of requests addressed to Governments each year while the number of replies declined. It was also time for non-governmental organizations and, hopefully, minority groups themselves to become more deeply involved in the learning process.

48. He welcomed the suggestion in the report that religious minorities should also be included in the study. Mr. Eide's study was broad-ranging and ought not therefore to neglect the religious aspect.

49. The issue of participation in the political and other public institutions of the nation was referred to in guideline 1 but, in his view, it was of such importance that it should become a separate guideline. As regards the other issues mentioned in guideline 1, the Sub-Commission could learn much from the experience of CERD, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.

50. The issue of internal self-determination by minorities was important and he considered that the Special Rapporteur should concentrate on that aspect

and the various elements comprised in it. He did not agree with the Special Rapporteur that the exercise of the right to external self-determination should be limited to peoples under colonial rule or subject to alien occupation, domination or exploitation. That issue had wider ramifications.

51. On guideline 3, he agreed with the Special Rapporteur that the best way to prevent external intervention was to find constructive domestic solutions based on consistent confidence-building efforts and that it was desirable to develop international mechanisms which allowed the parties to address the international community for purposes of conflict resolution.

52. He agreed with the emphasis placed on the importance of both negative and positive measures for the effective protection of human rights set out in guideline 4. Again the Sub-Commission should draw on the experience of other bodies and, in that connection, he referred to article 1 (4) of the International Convention on the Elimination of All Forms of Racial Discrimination. He disagreed with Mr. Sachar on the issue of the impact of the development process on the rights of minorities. Sometimes minority problems had been aggravated by the development process. An example would be the case of a natural resource discovered on the land of a minority when the issue might arise as to whether the minority should have the exclusive benefit of the discovery or whether it should be shared with the rest of the country. A case in point was that of oil discovered in the land of the Kurds in Iraq or in that of Indian tribes in Nicaragua. Such issues were important for the solution of problems and tensions between the minority and the majority of the population.

53. Referring to paragraphs 65 and 66 of the report, he considered that a distinction must be drawn between minorities and indigenous peoples. The development of legislation on that aspect would be relevant to the rights of minorities.

54. In conclusion, he supported the proposals made by Mrs. Daes.

55. Mrs. WARZAZI said that recent developments had brought the question of minorities back into the limelight with all its tragic implications for the internal security of countries as well as of their neighbours. In her view, the machinery of conflict prevention was of great importance and the Special Rapporteur must examine that aspect carefully.

56. In paragraph 21 of the report, the Sub-Commission had been asked whether Governments or minorities themselves should be approached to find out what the minorities wanted. In her view, it was essential to talk to both parties.

57. In regard to guideline 1, she welcomed the call for the full participation of all individuals and groups in the quest for peaceful and constructive solutions with a view to the ultimate establishment of equality in the enjoyment of all human rights.

58. She considered that in paragraph 27 wording such as "violation of ordinary human rights" should have been used rather than "lack of a respect for ordinary human rights".

59. In connection with paragraph 29, which stated that minorities should not be given special privileges, she pointed out that article 1 (4), of the International Convention on the Elimination of All Forms of Racial Discrimination provided for special measures to ensure equal enjoyment of human rights, and stipulated that those measures should not be continued after the objectives for which they had been taken had been achieved.

60. Religious minorities were, however, a special case that should be studied by the Special Rapporteur. Some religious minorities were not considered as such by the host country but rather as racial minorities. They were in fact both racial and religious minorities and the possibility should be considered of granting them rights under the Universal Declaration of Human Rights, the International Covenant and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (although the latter instrument was not legally binding). To illustrate her point, she recalled the case of the Muslim school-girls in France who had wished to wear head-scarves to school. There had been an outcry on the grounds that French schools were secular and that not even clothing should show one's religious belief. In the United Kingdom, the authorities had been more flexible and allowed head-scarves to be worn. Tolerance should be shown in such cases as long as no prejudice for the host society was involved.

61. It would be interesting to see how the provisions applying to migrant workers - in particular Muslim workers - could be improved.

62. She endorsed the Special Rapporteur's remark concerning the restrictions to the rights and freedoms set out in the Covenants.

63. She welcomed the stress laid on economic development in paragraph 36.

64. There seemed to be some confusion about the definition of "minority". She took it that the Special Rapporteur had been referring to indigenous populations in paragraph 36 which referred to the preservation of natural resources and the protection of traditional ways of life. However, indigenous populations should not be assimilated with minorities, since they were the original inhabitants of their country.

65. She believed that the minorities discussed under guideline 2 had been considered by the Special Rapporteur in the European context. That concept should be extended to other minorities, not necessarily from neighbouring countries; she was thinking in particular of people of Asian and African ethnic origin. The study should take account of the definition in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, which referred to race and ethnic origin. Migrant workers from Africa constituted a racial minority in European host countries, while representing a sizeable proportion of the minority of migrant workers in those countries.

66. The Special Rapporteur should look into the question of migrant workers in countries where the number of foreign workers exceeded that of the local population, as for instance in the Gulf, where foreign workers had represented between 50 to 70 per cent of the population.

67. She considered that the wording of paragraph 69 should be made more affirmative so as to make it clear that no one should use means and methods that constituted violations of human rights. It should be implied that the State had a duty to intervene in such cases.

68. Mr. KHALIFA said that the scope of the study was enormous, but it should be kept within bounds and prevented from overflowing into neighbouring areas. However, Mr. Eide's task was more necessary than ever in view of the recent disintegration of political entities.

69. One important problem facing society was the movement towards union, which might be ethnocentrism in disguise, as in the case of the movement uniting a large group of countries in Europe in order to conserve the superior attributes and capabilities of those who had spearheaded modern civilization. It was important to prevent that movement towards union from becoming a replay of Romans and barbarians - the latter being all those who lived beyond the walls of Rome.

70. Nationalism, which might mask racialism, separatism, resentment or revenge, was of greater concern to society. There had long been an impression that minorities had been contained and that nationalistic aspirations had died out within large political entities. However, in the new climate of free speech and democratic freedom, nationalist feelings had again arisen in Eastern Europe. As the economic crisis deepened, nationalist feelings would increasingly flare up and scapegoats would be sought for all social ills and economic suffering.

71. The concept of self-determination, which had never been quite clear, was becoming even more complex because of nationalistic movements and the desire to secede from already existing sovereign States such as the Soviet Union and Yugoslavia. If such movements continued there would soon be no more minorities: all would have become independent States, doubling the membership of the United Nations.

72. Minorities nowadays were not satisfied with protection but often wished to pass from self-determination to secession or independence. But self-determination was sometimes merely self-mutilation.

73. He therefore suggested that the study should narrow down the concept of minorities as far as possible for otherwise its aim would be defeated. Emphasizing and enlarging upon minority status was bound to worsen already-existing racial feelings and lead to the atomization of nations or to a regression to quasi-tribalism.

74. In paragraph 21 of his report Mr. Eide had referred to his own statement at the Sub-Commission's previous session. It was stated in that paragraph that he had argued that the Sub-Commission should ascertain what the minorities wanted. Mr. Eide then asked how the Sub-Commission should proceed to obtain the views of the minorities.

75. In fact, in the context of a discussion on whether the Sub-Commission should have a working definition of minorities, he had said that while a

proper definition would be hard to secure, at least the Sub-Commission should decide what was not a minority. Some purely religious minorities would not wish to be considered as minorities within the meaning of article 27 of the International Covenant on Civil and Political Rights, since they were racially, linguistically and culturally part of the mainstream. Mrs. Warzazi had also made that point.

76. The letter and spirit of international law and human rights jurisprudence did not allow identity to be based simply on religious belief, for that would destabilize the unity of a nation. He hoped that that argument would enable Mrs. Daes to have second thoughts about the idea she had put forward.

77. There was a whole body of international instruments safeguarding religious freedom and combating religious intolerance. It would be a pity to infer that simply because a person had another religious belief he was entitled to break away from a society with which he shared origins, language and culture.

78. He hoped that he had answered Mr. Eide's question in paragraph 16 of his report as to whether religious minorities should be included in the study.

79. He hoped, in conclusion, that Mr. Eide would resist any pressure or temptation to turn his report into a general report on all human rights throughout the world.

The meeting rose at 1.05 p.m.